IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C)861/2002

Govind Prasad Tyagi & Ors.	...Petitioner through Mr. Ravinder Sethi, Sr. Adv. with Mr. Sumit Bansal, Adv.

Versus

Govt. of NCT of Delhi & Ors.	...Respondent through Mr. Arun Birbal, Adv. for GNCTD/L&B Deptt. Ms. Shobhana Takiar, Adv. for DDA

WITH

W.P.(C) 1030/2002

Teka & Ors.	...Petitioner through Mr. Ravinder Sethi, Sr. Adv. with Mr. Sumit Bansal, Adv.

Versus

Govt. of NCT of Delhi & Ors.	...Respondent through Mr. Arun Birbal, Adv. for GNCTD/L&B Deptt. Ms. Shobhana Takiar, Adv. for DDA

WITH

W.P.(C) 1122/2002

Jasbir Tyagi & Ors. ...Petitioner through
Mr. Ravinder Sethi,
Sr. Adv. with
Mr. Sumit Bansal,
Adv.

Versus

Govt. of NCT of Delhi & Ors. ...Respondent through
Mr. Arun Birbal, Adv.
for GNCTD/L&B
Deptt.
Ms. Shobhana Takiar,
Adv. for DDA

Date of Hearing : July 31, 2007

Date of Decision : September 12, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

: VIKRAMAJIT SEN, J.

J U D G M E N T

1. In this batch of writ petitions it has been prayed -(a) that the demolition of structures belonging to the Petitioners carried out by the DDA is arbitrary and in violation of the principles of natural justice; (b) that a

mandamus be issued restraining the Respondents from interfering with the possession of the Petitioners; (c) that a mandamus be issued declaring the acquisition proceedings of land forming part of Khasra Nos.733 and 734 measuring 35 bighas 5 biswas situated in Village Basai Darapur as having lapsed pursuant to Section 11-A of the Land Acquisition Act, 1894 ('LA Act' for short); and (d) that the Respondents be directed to release the land of the Petitioners under Section 48 of the LA Act. Prior to the filing of these Petitions a person interested in this very parcel of land had approached this Court by filing WP(C) No.4362/2001 which was decided on 20.12.2001. In those proceedings it had been asseverated by the Delhi Development Authority (DDA) that there was no decision for de-notifying the subject land acquired under Award No.7/97-98. This statement contained in the Counter Affidavit filed on behalf of the Government of NCT of Delhi has not been challenged. The grievance in WP(C) 4362/2001 titled *Shri Anand Tyagi & Ors. -vs- Union of India & Ors.* was that the Respondents were adopting pick and choose policy for carrying out demolition. It was in that

context that the learned Single Judge had directed “that the respondents will not take possession only of the land belonging to the petitioner without taking steps to take possession of the other portions of the land acquired by the aforesaid award, which may be required by the respondent as per requirement of the beneficiaries”. The Petition was disposed of with these observations. Mr. Sethi, learned Senior Counsel for the Petitioners, has contended that under ostensible compliance with these Orders of the learned Single Judge the entire tract of land belonging to the sundry petitioners before us had been taken possession of, overlooking and ignoring the fact that only a small portion of the land was actually required.

2. It appears that some of the residents/occupants of the acquired land had written to the Land Acquisition Collector that since the acquisition was vide Notification No.F4(35)/ 65 L & H dated 28.1.1966, consequent upon amendments carried out to the LA Act, certificates be issued that the land was no longer required. An undated letter has been placed on record as Annexure P-11 purporting to have been

written by Naib Tehsildar(LA) Branch Delhi confirming that the land had not been acquired and it was now free from acquisition. This document has been denied by the Respondents who have emphasised that it does not bear any reference number or file number. Prima facie, these documents do not inspire any confidence. Our attention has also been drawn to a letter dated February, 1998 authored by Shamim Ahmed, Director (LM) HQ, DDA informing the residents and local politicians that the Khasra Nos. were heavily built-up and “as such the land pertaining to these Khasra Nos. cannot be utilised by DDA”. The residents/occupants were advised to take up the matter of de-notification with the Authorities concerned. By itself any official or officer of the Government cannot, on its own, bind the Government as has been observed in this very letter that the DDA was to convey its opinion regarding de-notification to the De-Notification Committee. The Petitioners would have been better advised to rely on the decision of the De-Notification Committee. Learned counsel for the Petitioners has also referred to the Representation dated 8.5.1997 made to the Hon'ble Chief Minister,

Government of National Capital Territory of Delhi for release of the built-up land. Minutes of the Meeting held in the Office of the Hon'ble Chief Minister on 4.11.1997 have been placed on the record. It refers to the subject Khasra No.732 and mentions that the whole area is built-up and in possession of more than 377 persons and about 1200 tenants; that the acquisition proceedings were to be completed before 23.9.1986 provided under Section 11-A of the LA Act; and that the lands were not required for any project. These statements are not correct for the reason that acquisition proceedings had been halted/stayed as a consequence of interim Orders passed by this Court. Therefore, it would not be correct to contend that Section 11-A mandated proceedings to be completed before 23.9.1986. It appears that at that Meeting it had been decided that (1) the Land and Building Department would immediately write to the DDA regarding de-notification of the area and (2) only land required for construction of few shops should be acquired. Since the requisite steps have not been taken by the Government, the Petitioners cannot avail of decisions purportedly taken in such Meetings. A

vain attempt had been made to establish possession of the Petitioners over the land by adverting to the letters of Shri Shamim Ahmed, Director (L & M) to the effect that physical possession of land acquired vide Award No.7/97-98 had not been received by the DDA. This does not establish that physical possession was not taken by the appropriate Authority.

3. The Petitioners also rely on a letter dated 28.1.2002 authored by the ADM/LAC (West) to the Commissioner LM-II, DDA on the subject of handing over of land required for development of Local Shopping Center (LSC) at Basai Darapur. In this letter the addressee was called upon to furnish to the LAC(West) the exact area of land for development of the LSC. On this basis it has been contended that only a small portion of land was required, and that the rest ought to have been released from acquisition. We have perused the said letters and are unable to arrive at the conclusion that the land, other than that required for the LSC, was in excess of the purposes of the acquisition. Development of the LSC was only one of

the purposes behind the acquisition. For the same reason the letter authored by the same officer two days later does not, in any wise, advance the case of the Petitioners. On the other hand the complaint of the DDA to the effect that possession of the land measuring 77 Bighas and 8 Biswas in village Basai Darapur acquired vide Award No.7/97-98 had not been handed over to the DDA, as expressed in their letters dated 26.7.1999 and 5.10.2001, makes it amply clear that the entire land was required for the purposes of Planned Development of Delhi.

4. The argument that since the Award was not published within two years, the entire acquisition had lapsed is devoid of merit. In ***Abhey Ram*** *(Dead) by LRs -vs- Union of India*, (1997) 5 SCC 421, a Three-Judges Bench had held that stay Orders obtained by some of the claimants prohibiting the Authorities from publication of Declaration under Section 6 would be applicable even to others similarly placed who had not obtained stay. Without reference to ***Abhey Ram*** a Two-Judges Bench had recently come to the same conclusion in the case titled *Smt. Bailamma (Dead) -vs-*

Poorxnaprajna House Building Co-operative Society, AIR 2000 SC 1132. It was clarified that the "explanation is in the widest possible terms which do not limit its operation to cases where an order of stay is obtained by a landowner alone. One can conceive of cases where apart from landowners others may be interested in stalling the land acquisition proceedings."

5. Possession of the lands, which are the subject matter of these writ petitions, was taken between the period 31.1.2002 and 2.2.2002. Writ Petitions were filed thereafter. In *Dharamvir -vs- Lieutenant Governor,* ILR(2007) II Delhi 121 and WP(C) No.2972/2007 titled *Satya Narain Prakash Punj -vs- Union of India* one of us along with J.P. Singh, J. had rejected the argument that assurances given by the Lieutenant Governor to the effect that colonies and built-up areas would be identified for regularisation and would be excluded from acquisition proceedings did not operate as estoppel in favour of the Petitioners. We had noted that it is incongruent that built-up areas which may subsequently be regularised would be

impervious to acquisition, where a regular and legal colony would be subject to acquisition for public purposes. We had also reiterated the conclusion that once a prayer under Section 48 of the LA Act had been made, challenge to the acquisition proceedings must logically be treated as having been given up.

6. Learned counsel for the Respondents have submitted that the entire land of approximately 77 Bighas continued to be required for the Planned Development of Delhi. This is borne out from the documents available on the record. Several Petitioners had filed Claims pursuant to the Notices under Sections 9 and 10 of the LA Act.

7. It will be relevant to mention that five other residents of Khasra No.732, Basai Darapur, New Delhi, have filed Civil Writ Petition No.1586/1982 with substantially the same prayers. On 20.3.1997 that Writ Petition had been dismissed as being devoid of merit in view of the Full Bench decision in ***Roshanara Begum*** *-vs- Union of India*, AIR 1996 Delhi 206 which came to be affirmed by the Apex

Court in ***Murari*** *-vs- Union of India*, (1997) 1 SCC 15. The only difference is that Mr. Ravinder Sethi had appeared for the DDA instead of Petitioners. CW 78/1982 titled Shri Laxmi Chand and Twelve Others -vs- Union of India came to be dismissed for the same reasons on 9.5.1997. Shri Om Prakash Tyagi and eight others also residents of the land bearing the same Khasra Nos. have filed CW 1653/1984 titled Shri Om Prakash Tyagi and Eight Others -vs- Union of India & Ors. which was decided in terms of ***Roshanara Begum***.

8. Writ Petitions are totally devoid of merit and are dismissed. All pending applications also stand disposed of. We, however, refrain from imposing costs.

(VIKRAMAJIT SEN)
JUDGE

(S.L. BHAYANA)
JUDGE

September 12, 2007
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